

Feb 01, 2019

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

IRMA HERNANDEZ,

Plaintiff,

v.

PRIDE PACKING CO., LLC, a

Washington limited liability company

a/k/a Pride Packing, and JAVIER LUNA,

Defendants.

NO. 1:18-cv-03183-SAB

ORDER REMANDING CASE

Before the Court are Defendant's Motion to Dismiss, ECF No. 8, and Plaintiff's Cross-Motion to Remand, ECF No. 11. The motions were heard without oral argument.

Plaintiff, a Washington Resident, was a packer at Defendant Pride Packing, a Washington Corporation, located in Yakima, Washington. On August 20, 2018 she filed a suit against Pride Packing and Mr. Luna, a manager at Pride Packing, in Yakima County Superior Court. The original complaint was largely conclusory. *See* ECF No. 1 Ex. 1. Plaintiff asserted a variety of claims, relating to workplace discrimination due to an on-the-job disability, wage and hour violations, an alleged violation of Washington's Industrial Insurance Act (WIIA), intentional infliction of emotional distress, and negligent infliction of emotional distress. Plaintiff brought workplace discrimination claims under both the ADA and WLAD, leave act violations under both FMLA and the Washington State Family

1 Leave Act, and wage and hour claims under the Fair Labor Standards Act and
2 Washington’s Minimum Wage Act.

3 Defendant removed on September 18, 2018, under federal question
4 jurisdiction for the federal claims and supplemental jurisdiction for the state
5 claims. *Id.* Defendant filed a motion to dismiss under FRCP 12(b)(6) on November
6 26, 2018, arguing that Plaintiff’s complaint consisted of conclusory allegations
7 that fall short of the pleading standard set by *Twombly* and *Iqbal*. ECF No. 8.

8 Plaintiff filed a First Amended Complaint (FAC) on December 13, 2018,
9 which removed the federal claims and provided more details regarding the factual
10 basis for her claims. ECF No. 10. The same day Plaintiff filed a response to the
11 Motion to Dismiss which included a Cross-Motion to Remand. ECF No. 11.
12 Defendant opposes the Cross-Motion for Remand. ECF No. 12.

13 **DISCUSSION**

14 The jurisdictional grant in the supplemental jurisdiction statute potentially
15 confers jurisdiction over “all other claims that are so related to claims in the action
16 within such original jurisdiction that they form part of the same case or
17 controversy under Article III of the United States Constitution.” 28 U.S.C. §
18 1367(a). However, the statute also provides that “[t]he district courts may decline
19 to exercise supplemental jurisdiction over a claim ... if ... (3) the district court has
20 dismissed all claims over which it has original jurisdiction....” *Id.* § 1367(c). The
21 Court is being called upon to decide the validity of several state and common law
22 claims despite the dismissal of all claims giving it federal question jurisdiction.

23 “[I]n the usual case in which all federal-law claims are eliminated before
24 trial, the balance of factors to be considered under the pendent jurisdiction
25 doctrine—judicial economy, convenience, fairness, and comity—will point toward
26 declining to exercise jurisdiction over the remaining state-law claims.” *Sanford v.*
27 *MemberWorks, Inc.*, 625 F.3d 550, 561 (9th Cir. 2010). On its face, those factors

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1 support remand. This case is very early in the pleading stages and there is no
2 indication that this Court is more convenient or fair than state court.

3 Defendant's main argument for why the Court should retain jurisdiction has
4 to do with allegations that Plaintiff engaged in "manipulative tactics." ECF No. 12
5 at 9. Plaintiff and Defendant exchanged emails in early November, in which
6 Defendant expressed confusion about the case due to the lack of facts pled in the
7 original Complaint. *See* ECF No. 13, Simpson Decl., Ex. A (Appx. 1). Plaintiff
8 responded that she was not planning to file an Amended Complaint clarifying her
9 claims, and that instead she wanted Pride Packing to file an answer to the
10 Complaint. Defendant then filed its motion to dismiss, on November 26, and
11 Plaintiff filed the FAC and cross-motion to remand on December 13. Defendant
12 also argues that Plaintiff engaged in "forum shopping" by failing to more
13 expeditiously drop the federal claims once Defendant removed the action.

14 The Ninth Circuit held in *Baddie v. Berkeley Farms* that a plaintiff who
15 initially filed in state court and, with all due speed after removal dismissed their
16 federal claims and moved for remand, did not engage in "manipulative" conduct.
17 64 F.3d 487, 491 (9th Cir. 1995) Rather, the Court found "[t]here was nothing
18 manipulative about that straight-forward tactical decision." *Id.* In *Baddie*, the
19 Plaintiff filed its FAC and motion to remand less than a month after removal.
20 *Baddie v. Berkeley Farms, Inc.*, No. C-93-2379 VRW, 1993 WL 317306, at *1
21 (N.D. Cal. Aug. 18, 1993), *rev'd*, 64 F.3d 487 (9th Cir. 1995). Here, the FAC and
22 cross-motion were filed three months after removal. Further, they were filed less
23 than three weeks after the motion to dismiss.

24 While the negotiations included as Appendix 1 to Mr. Simpson's
25 Declaration do suggest that Plaintiff originally planned to stand on the original
26 complaint, they did not involve any discussion of dropping the federal claims and
27 remanding. It seems that after reading the motion to dismiss and considering the
28 *Twombly* pleading standards, Plaintiff made a permissible and "straight-forward

1 tactical decision” to remove the federal claims. *See Baddie*, 64 F.3d at 491. Once
2 “the federal question, like Elvis, had left the building,” the Plaintiff was entitled to
3 remand of the pendant state claims. *Araya v. JPMorgan Chase Bank, N.A.*, 775
4 F.3d 409, 419 (D.C. Cir. 2014). Thus, this Court **GRANTS** the Cross-Motion to
5 Remand, which renders the Motion to Dismiss moot.

6 Accordingly, **IT IS HEREBY ORDERED:**

7 1. Defendant’s Motion to Dismiss, ECF No. 8, is **DENIED as moot**.

8 2. Plaintiff’s Motion to Remand, ECF No. 11, is **GRANTED**.

9 3. The above-captioned case is **REMANDED** to Yakima County Superior
10 Court.

11 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
12 file this Order, provide copies to counsel, and **close** this file.

13 **DATED** this 1st day of February 2019.



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A handwritten signature in blue ink that reads "Stanley A. Bastian". The signature is written in a cursive, flowing style.

21 Stanley A. Bastian
22 United States District Judge
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